



February 23, 2001

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## SENATE BILL No. 576

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DIGEST OF SB 576 (Updated February 22, 2001 9:11 AM - DI 106)

**Citations Affected:** IC 9-24; IC 9-30; IC 35-50; noncode.

**Synopsis:** Drunk driving. Establishes that a person who operates a motor vehicle while intoxicated with at least one child under the age of 18 in the vehicle commits a class A misdemeanor if the driver is less than 21 years of age, and a non-suspendible Class D felony if the driver is 21 years of age or older. Provides that a person whose license is suspended following a conviction of: (1) operating a motor vehicle while intoxicated with at least one child in the vehicle; (2) operating a motor vehicle while intoxicated with one previous conviction; and (3) operating a motor vehicle with an alcohol concentration greater than 0.15%; may not obtain a probationary license. Requires lifetime license suspension for persons convicted of operating a motor vehicle while intoxicated causing death. Reduces the availability of hardship licenses for persons with lifetime license suspensions. Increases mandatory jail time for various alcohol offenses.

**Effective:** July 1, 2001.

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**Young R Michael, Alexa, Bray,  
Howard, Broden**

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January 23, 2001, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.

February 22, 2001, amended, reported favorably — Do Pass.

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SB 576—LS 8111/DI 51+



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February 23, 2001

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

## SENATE BILL No. 576

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 9-24-15-2 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. **(a) Except as**  
3 **provided in subsections (b) and (c), if:**

4 (1) an individual's driving license has been suspended under  
5 Indiana motor vehicle law; and

6 (2) because of the nature of the individual's employment the  
7 suspension would work an undue hardship and burden upon the  
8 individual's family or dependents;

9 the individual may file a verified petition for a restricted driving permit  
10 for the sole purpose of driving to and from work and in the course of  
11 employment during the period of the driving license suspension.

12 **(b) A person who is convicted of an offense under IC 9-30-5-5 or**  
13 **who violates IC 9-30-5-3(b) may not file a verified petition for a**  
14 **restricted driving permit if:**

15 (1) less than ten (10) years have elapsed after the date the  
16 person's license was suspended for the offense; and

17 (2) the person was less than twenty-one (21) years of age when

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the person committed the offense.

(c) A person who is convicted of an offense under IC 9-30-5-5 or who violates IC 9-30-5-3(b) may not file a verified petition for a restricted driving permit if:

(1) less than twenty-five (25) years have elapsed after the date the person's license was suspended for the offense; and

(2) the person was at least twenty-one (21) years of age when the person committed the offense.

SECTION 2. IC 9-30-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 3. (a) A person who violates section 1 or 2 of this chapter commits a Class D felony if:

(1) the person has a previous conviction of operating while intoxicated and

(2) the previous conviction of operating while intoxicated that occurred within the five (5) years immediately preceding the occurrence of the violation of section 1 or 2 of this chapter; or

(2) the person operated a motor vehicle with at least one (1) passenger less than eighteen (18) years of age in the vehicle. However, the offense is a class A misdemeanor if the person who operated the motor vehicle was less than 21 years of age.

(b) A person who violates section 1 or 2 of this chapter is an habitual substance offender (IC 35-50-2-10) if the person has at least two (2) prior unrelated convictions for operating while intoxicated.

SECTION 3. IC 9-30-5-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 10. (a) In addition to a criminal penalty imposed for an offense under this chapter or IC 14-15-8, the court shall, after reviewing the person's bureau driving record and other relevant evidence, recommend the suspension of the person's driving privileges for the fixed period of time specified under this section.

(b) If the court finds that the person:

(1) does not have a previous conviction of operating a vehicle or a motorboat while intoxicated; or

(2) has a previous conviction of operating a vehicle or a motorboat while intoxicated that occurred at least ten (10) years before the conviction under consideration by the court;

the court shall recommend the suspension of the person's driving privileges for at least ninety (90) days but not more than two (2) years.

(c) If the court finds that the person has a previous conviction of operating a vehicle or a motorboat while intoxicated and the previous conviction occurred more than five (5) years but less than ten (10)

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years before the conviction under consideration by the court, the court shall recommend the suspension of the person's driving privileges for at least one hundred eighty (180) days but not more than two (2) years. The court may stay the execution of that part of the suspension that exceeds the minimum period of suspension and grant the person probationary driving privileges for a period of time equal to the length of the stay. If the court grants probationary driving privileges under this subsection, the court may order that the probationary driving privileges include the requirement that the person may not operate a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.

(d) If the court finds that the person has a previous conviction of operating a vehicle or a motorboat while intoxicated and the previous conviction occurred less than five (5) years before the conviction under consideration by the court, the court shall recommend the suspension of the person's driving privileges for at least one (1) year but not more than two (2) years. ~~The court may stay the execution of that part of the suspension that exceeds the minimum period of suspension and grant the person probationary driving privileges for a period of time equal to the length of the stay. If the court grants probationary driving privileges under this subsection, the court may order that the probationary driving privileges include the requirement that the person may not operate a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.~~

(e) **If the conviction under consideration by the court is for an offense under section 1(b) of this chapter, the court shall recommend the suspension of the person's driving privileges for at least one hundred eighty (180) days but not more than two (2) years.**

(f) **If:**

- (1) the conviction under consideration by the court is for an offense under section 1(a), 1(c) or 2 of this chapter; and**
- (2) the court determines that the person operated a vehicle with at least one (1) passenger less than eighteen (18) years of age in the vehicle;**

**the court shall recommend the suspension of the person's driving privileges for at least one hundred eighty (180) days but not more than two (2) years.**

(g) If the conviction under consideration by the court is for an offense under:

- (1) section 4 of this chapter;
- (2) ~~section 5 of this chapter;~~



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~~(2)~~ (2) IC 14-15-8-8(b); or

~~(3)~~ (3) IC 14-15-8-8(c);

the court shall recommend the suspension of the person's driving privileges for at least two (2) years but not more than five (5) years.

**(h) If:**

**(1) the conviction under consideration by the court is for an offense under section 1 or 2 of this chapter; and**

**(2) the court finds that the person has at least two (2) prior unrelated convictions for operating while intoxicated;**

**the court shall recommend the lifetime suspension of the person's driving privileges.**

**(i) If the conviction under consideration by the court is for an offense under section 5 of this chapter, the court shall recommend the lifetime suspension of the person's driving privileges.**

~~(j)~~ **(j) Subject to this section**, if the conviction under consideration by the court is for an offense involving the use of a controlled substance listed in schedule I, II, III, IV, or V of IC 35-48-2, the court shall recommend the suspension or revocation of the person's driving privileges for at least six (6) months.

SECTION 4. IC 9-30-5-15, AS AMENDED BY P.L.32-2000, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 15. (a) In addition to any criminal penalty imposed for an offense under this chapter the court shall:

(1) order:

(A) that the person be imprisoned for at least five (5) days; ~~or~~  
**and**

(B) **that** the person ~~to~~ perform at least thirty (30) days of community restitution or service; and

(2) order the person to receive an assessment of the person's degree of alcohol and drug abuse and, if appropriate, to successfully complete an alcohol or drug abuse treatment program, including an alcohol deterrent program if the person suffers from alcohol abuse;

if the person has one (1) previous conviction of operating while intoxicated.

(b) In addition to any criminal penalty imposed for an offense under this chapter, the court shall:

(1) order

~~(A)~~ that the person be imprisoned for at least ~~ten (10)~~ **ninety (90)** days; ~~or~~

~~(B) the person to perform at least sixty (60) days of community restitution or service; and~~



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(2) order the person to receive an assessment of the person's degree of alcohol and drug abuse and, if appropriate, to successfully complete an alcohol or drug abuse treatment program, including an alcohol deterrent program if the person suffers from alcohol abuse;  
if the person has at least two (2) previous convictions of operating while intoxicated.

**(c) In addition to any criminal penalty imposed for an offense under this chapter, the court shall:**

**(1) order that the person be imprisoned for at least three (3) days; and**

**(2) order the person to receive an assessment of the person's degree of alcohol and drug abuse and, if appropriate, to successfully complete an alcohol or drug abuse treatment program, including an alcohol deterrent program if the person suffers from alcohol abuse;**  
**if the person is convicted of an offense under section 1(b) of this chapter.**

**(d) In addition to any criminal penalty imposed for an offense under this chapter, the court shall:**

**(1) order that the person be imprisoned for at least three (3) days; and**

**(2) order the person to:**

**(A) receive an assessment of the person's degree of alcohol and drug abuse; and**

**(B) if the person suffers from alcohol abuse, successfully complete an alcohol or drug abuse treatment program, including an alcohol deterrent program, if appropriate;**  
**if the person is convicted of an offense under section 1(a), 1(c), or 2 of this chapter with at least one (1) passenger less than eighteen (18) years of age in the vehicle.**

**(e) In addition to any criminal penalty imposed for an offense under this chapter, the court shall:**

**(1) order that the person be imprisoned for at least two (2) years; and**

**(2) order the person to:**

**(A) receive an assessment of the person's degree of alcohol and drug abuse; and**

**(B) if the person suffers from alcohol abuse, successfully complete an alcohol or drug abuse treatment program, including an alcohol deterrent program, if appropriate;**  
**if the person is convicted of an offense under section 5 of this**

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1 **chapter.**

2 ~~(e)~~ **(f)** Notwithstanding IC 35-50-2-2 and IC 35-50-3-1, a sentence  
3 imposed under this section may not be suspended. The court may  
4 require that the person serve the term of imprisonment in an  
5 appropriate facility at whatever time or intervals (consecutive or  
6 intermittent) determined appropriate by the court. However:

7 (1) at least forty-eight (48) hours of the sentence must be served  
8 consecutively; and

9 (2) **except as provided in subsection (e)**, the entire sentence  
10 must be served within six (6) months after the date of sentencing.

11 ~~(d)~~ **(g)** Notwithstanding IC 35-50-6, a person does not earn credit  
12 time while serving a sentence imposed under this section.

13 SECTION 5. IC 35-50-2-2, AS AMENDED BY P.L.188-1999,  
14 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
15 JULY 1, 2001]: Sec. 2. (a) The court may suspend any part of a  
16 sentence for a felony, except as provided in this section or in section  
17 2.1 of this chapter.

18 (b) With respect to the following crimes listed in this subsection, the  
19 court may suspend only that part of the sentence that is in excess of the  
20 minimum sentence:

21 (1) The crime committed was a Class A or Class B felony and the  
22 person has a prior unrelated felony conviction.

23 (2) The crime committed was a Class C felony and less than seven  
24 (7) years have elapsed between the date the person was  
25 discharged from probation, imprisonment, or parole, whichever  
26 is later, for a prior unrelated felony conviction and the date the  
27 person committed the Class C felony for which the person is  
28 being sentenced.

29 (3) The crime committed was a Class D felony and less than three  
30 (3) years have elapsed between the date the person was  
31 discharged from probation, imprisonment, or parole, whichever  
32 is later, for a prior unrelated felony conviction and the date the  
33 person committed the Class D felony for which the person is  
34 being sentenced. However, the court may suspend the minimum  
35 sentence for the crime only if the court orders home detention  
36 under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum  
37 sentence specified for the crime under this chapter.

38 (4) The felony committed was:

39 (A) murder (IC 35-42-1-1);

40 (B) battery (IC 35-42-2-1) with a deadly weapon;

41 (C) sexual battery (IC 35-42-4-8) with a deadly weapon;

42 (D) kidnapping (IC 35-42-3-2);



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- 1 (E) confinement (IC 35-42-3-3) with a deadly weapon;  
 2 (F) rape (IC 35-42-4-1) as a Class A felony;  
 3 (G) criminal deviate conduct (IC 35-42-4-2) as a Class A  
 4 felony;  
 5 (H) child molesting (IC 35-42-4-3) as a Class A or Class B  
 6 felony;  
 7 (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or  
 8 with a deadly weapon;  
 9 (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily  
 10 injury;  
 11 (K) burglary (IC 35-43-2-1) resulting in serious bodily injury  
 12 or with a deadly weapon;  
 13 (L) resisting law enforcement (IC 35-44-3-3) with a deadly  
 14 weapon;  
 15 (M) escape (IC 35-44-3-5) with a deadly weapon;  
 16 (N) rioting (IC 35-45-1-2) with a deadly weapon;  
 17 (O) dealing in cocaine or a narcotic drug (IC 35-48-4-1) as a  
 18 Class A felony;  
 19 (P) dealing in a schedule I, II, or III controlled substance  
 20 (IC 35-48-4-2) if the amount of controlled substance involved  
 21 has an aggregate weight of three (3) grams or more;  
 22 (Q) an offense under IC 9-30-5 (operating a vehicle while  
 23 intoxicated) and the person who committed the offense has  
 24 accumulated at least two (2) prior unrelated convictions under  
 25 IC 9-30-5; ~~or~~  
 26 **(R) operating a vehicle while intoxicated with at least one**  
 27 **(1) passenger less than eighteen (18) years of age in the**  
 28 **vehicle as a Class D felony (IC 9-30-5-3(a)(2)); or**  
 29 **(S) aggravated battery (IC 35-42-2-1.5).**  
 30 (c) Except as provided in subsection (e), whenever the court  
 31 suspends a sentence for a felony, it shall place the person on probation  
 32 under IC 35-38-2 for a fixed period to end not later than the date that  
 33 the maximum sentence that may be imposed for the felony will expire.  
 34 (d) The minimum sentence for a person convicted of voluntary  
 35 manslaughter may not be suspended unless the court finds at the  
 36 sentencing hearing that the crime was not committed by means of a  
 37 deadly weapon.  
 38 (e) Whenever the court suspends that part of an offender's (as  
 39 defined in IC 5-2-12-4) sentence that is suspendible under subsection  
 40 (b), the court shall place the offender on probation under IC 35-38-2 for  
 41 not more than ten (10) years.  
 42 (f) An additional term of imprisonment imposed under

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1 IC 35-50-2-11 may not be suspended.

2 (g) A term of imprisonment imposed under IC 35-47-10-6 or  
3 IC 35-47-10-7 may not be suspended if the commission of the offense  
4 was knowing or intentional.

5 (h) A term of imprisonment imposed for an offense under  
6 IC 35-48-4-6(b)(1)(B) may not be suspended.

7 SECTION 6. [EFFECTIVE JULY 1, 2001] **IC 9-30-5-3,**  
8 **IC 9-30-5-5, IC 9-30-5-10, IC 9-30-5-15, and IC 35-50-2-2, all as**  
9 **amended by this act, apply only if the last offense was committed**  
10 **after June 30, 2001.**

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SENATE MOTION

Mr. President: I move that Senators Alexa and Bray be added as coauthors of Senate Bill 576.

YOUNG R MICHAEL

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SENATE MOTION

Mr. President: I move that Senators Howard and Broden be added as coauthors of Senate Bill 576.

YOUNG R MICHAEL

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## COMMITTEE REPORT

Mr. President: The Senate Committee on Corrections, Criminal and Civil Procedures, to which was referred Senate Bill No. 576, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 13, delete "IC 9-30-5-3(b) or".

Page 1, line 13, after "9-30-5-5" insert **"or who violates IC 9-30-5-3(b)"**.

Page 2, line 2, delete "IC 9-30-5-3(b)".

Page 2, line 3, delete "or".

Page 2, line 3, after "9-30-5-5" insert **"or who violates IC 9-30-5-3(b)"**.

Page 2, line 18, delete "child" and insert **"passenger"**.

Page 2, line 18, after "vehicle." insert **"However, the offense is a class A misdemeanor if the person who operated the motor vehicle was less than 21 years of age."**

Page 2, line 19, delete "commits".

Page 2, line 20, delete "a Class C felony" and insert **"is an habitual substance offender (IC 35-50-2-10)"**.

Page 2, delete lines 22 through 42.

Page 4, line 8, delete "1" and insert **"1(a), 1(c)"**.

Page 4, line 10, delete "child" and insert **"passenger"**.

Page 6, line 5, delete "operating while intoxicated" and insert **"an offense under section 1(a), 1(c), or 2 of this chapter"**.

Page 6, line 6, delete "child" and insert **"passenger"**.

Page 6, line 9, delete "three (3)" and insert **"two (2)"**.

Page 6, line 17, delete "operating while intoxicated causing" and insert **"an offense under section 5 of this chapter"**.

Page 6, delete line 18.

Page 8, line 2, delete "child" and insert **"passenger"**.

Page 8, line 3, delete "(9-30-5-3-(a)(2))" and insert **"as a Class D felony (IC 9-30-5-3(a)(2))"**.

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 576 as introduced.)

LONG, Chairperson

Committee Vote: Yeas 8, Nays 2.

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